

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
NOV 28 2017	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**SEIKO EPSON CORP
AND EPSON AMERICA,**

Plaintiffs,

Inksystem LLC, et.al.

Defendants.

Case No.: 3:16-cv-00524-RCJ-VPC

**DEFENDANTS KRAVCHUK AND
INKSYSTEM LLC'S REPLY TO
PLAINTIFFS' OPPOSITION TO
DEFENDANTS KRAVCHUK AND
INKSYSTEM LLC'S MOTION TO
VACATE OR ALTERNATIVELY
AMEND PRELIMINARY
INJUNCTION AND INCREASE THE
BOND ECF No. 159**

A. BACKGROUND.

On August 22, 2017, the Court granted Plaintiffs Seiko Epson Corporation and Epson America, Inc., (collectively “Plaintiffs”) motion for a preliminary injunction order for asset seizure and impoundment and order show cause regarding issuance of pre-judgement asset seizure pursuant to the Lanham Act (15 U.S.C. §1051 et.seq.), and Federal Rules of Civil Procedure, Rule 65 (“Motion”), against Defendant’s AF LLC, ART LLC, Inkredible llc LLC, Andriy Kravchuk, Igor Bielov, Artem Koshkalda, Vitalii Maliuk (collectively Defendants). ECF No. 159.

1 On October 23, 2017, based on new significant facts (See expert report
2 “*Epson cartridge report*” attached to ECF No. 256 as Exhibit 1) recently obtained,
3 Defendants filed a collective motion to dissolve the preliminary injunction or
4 alternatively increase the bond (ECF No. 231) as one of the factors in determining
5 likelihood of prevailing on the merits was significantly changed.

6 On October 27, 2017, the Defendants’ motion (ECF No. 231) was stricken
7 by the Court within the Order of Contempt as to Artem Koshkalda and Vladimir
8 Westbrook stating that “Koshkalda, his company ART LLC and Westbrook are
9 prohibited from filing any further motions in this case and any such filings to
10 which they are a moving party will immediately be stricken, including [...] ECF
11 No. 231”. (See ECF No. 250).

12 On November 10, 2017, Defendants Kravchuk and Inksystem LLC filed a
13 separate motion to vacate or alternatively amend preliminary injunction and
14 increase the bond (See ECF No. 256) (the “Motion”).

15 On November 22, 2017, Plaintiffs filed an opposition to ECF No. 256 (See
16 ECF No. 266) (“Opposition”).

17 Pursuant LR 7-2 Defendants Kravchuk and Inksystem LLC file this REPLY
18 TO PLAINTIFFS’ OPPOSITION TO DEFENDANTS KRAVCHUK AND
19 INKSYSTEM LLC’S MOTION TO VACATE OR ALTERNATIVELY AMEND

1 PRELIMINARY INJUNCTION AND INCREASE THE BOND.

2

3 **B. ARGUMENT.**

4 Defendants Kravchuk and Inksystem LLC's Motion made the following
5 arguments which were opposed by Plaintiffs:

6 1. Defendants Kravchuk and Inksystem LLC recently obtained the
7 results of independent expert review by independent expert Dr. Battersby,
8 according to which the Epson branded ink cartridges that Plaintiffs claimed were
9 counterfeit were found to be genuine Epson ink cartridges. (See Exhibit 1 attached
10 to ECF No. 256 and section B. ARGUMENT in ECF No. 256).

11 2. Plaintiffs' representative, Mr. Herb Seitz, was present during the
12 analysis of the cartridges by Dr. Battersby as part of the AF, LLC v. Amazon
13 Services Case (Case No. 011700014976). Therefore, Plaintiffs were
14 well-acquainted with these new important facts, the results of independent expert
15 report (See Exhibit 1 attached to ECF. No 256), but never informed the Court about
16 them. This expert report significantly impacts Plaintiffs' likelihood of prevailing on
17 the merits, since it states the cartridges are genuine, even while Plaintiffs relied on
18 that case (AF, LLC v. Amazon Services et al. AAA Case No. 011700014976) as
19 evidence that Defendants were selling counterfeit Epson products.

1 3. The law provides that the Court may amend the preliminary injunction
2 when new significant facts are discovered:

3 a) "A party seeking modification or dissolution of an injunction [*6]
4 bears the burden of establishing that a significant change in facts or law warrants
5 revision or dissolution of the injunction." *Sharp v. Weston*, 233 F.3d 1166, 1170
6 (9th Cir. 2000);

7 b) in the context of a preliminary injunction, "a district judge always has
8 power to modify or to overturn an interlocutory order or decision while it remains
9 interlocutory." *Credit Suisse First Bos. Corp. v. Grunwald*, 400 F.3d 1119, 1123
10 (9th Cir. 2005).

11 4. Defendants Kravchuk and Inksystem LLC, as a result of the seizure
12 and impoundment which were conducted on September 2016 by Plaintiffs were
13 deprived from inventory totalling approximately \$800,000.

14 5. Defendants Kravchuk and Inksystem LLC are, therefore, moving to
15 increasing the bond to \$800,000 in order to fairly compensate Defendants for
16 damages should the Court find the injunction was improper.

17 Plaintiffs started their Opposition with the following four exclamations.
18 Defendants Kravchuk and Inksystem LLC comment on them respectively:

1 1) Defendants Kravchuk and Inksystem LLC's motion ECF No. 256 "is
2 without merit and is properly denied"; ECF No. 266

3 Defendants Kravchuk and Inksystem LLC provided the Court with strong
4 undisputed facts (See arguments 1.-5. above and ECF No. 256) and, therefore, their
5 Motion ECF No. 256 is on merits and should be granted. Plaintiffs' claim is
6 groundless.

7 2) Defendants Kravchuk and Inksystem LLC's motion ECF No. 256 "is
8 another example of the concerted effort by the original group of Defendants to
9 delay and increase costs for Plaintiffs"; ECF No. 266

10 Defendants Kravchuk and Inksystem LLC's Motion ECF No. 256 is on the
11 merits and filing motions is the only way Defendants Kravchuk and Inksystem
12 LLC can defend themselves. This argument is without merit.

13 3) Defendants Kravchuk and Inksystem LLC's motion ECF No. 256
14 "lacks basic support and the filer of the Motion as reflected in the "Docket Text" of
15 the Notice of Electronic Filing, was Defendant Artem Koshkalda"; ECF No. 266

16 Defendants Kravchuk and Inksystem LLC filed this opposition. They had to
17 do so through Artem Koshkalda at this time since they do not have the ability to
18 file electronically so that the Court and Plaintiffs can receive the filing
19 immediately. If the Court considers this improper, then Defendants Kravchuk and

1 Inksystem LLC will have to file manually. Regardless of the process used to file,
2 the parties filing the Motion were Defendants Kravchuk and Inksystem LLC.
3 Plaintiffs' argument is groundless.

4 4) "Moreover, Defendants' [Kravchuk] continued attempt to have
5 Inksystem LLC represent itself through Defendant Kravchuk is improper". ECF
6 No. 266

7 Again, this is the only way Defendants Kravchuk and Inksystem LLC can
8 defend themselves, as a result of all the inventory to be seized by impoundment
9 court order ECF 33. The company managed to sustain the counsel for about 10
10 months then filed for bankruptcy. Plaintiffs' arguments rebutted above are not on
11 the merits and do not counter the substance of Defendants Kravchuk and Inksystem
12 LLC's arguments in their Motion (ECF No. 256). Plaintiffs then made the
13 following two additional arguments:

14 A. "Defendants Have Not Brought Forth Any Credible or Admissible
15 Evidence Requiring Any Change to the Court's Asset Freeze Order or to the Bond
16 Currently in Place"; ECF No. 266.

17 Even the formulation of this argument contradicts with the fact that
18 Defendants Kravchuk and Inksystem LLC provided the Court with strong
19 undisputable facts (See arguments 1.-5. above and ECF No. 256). Plaintiffs'

1 arguments here are based on their belief that their allegation the cartridges are
2 counterfeit is “admitted by Defendants [Kravchuk and Inksystem LLC] in
3 deposition” (ECF No. 266) which is completely false. Plaintiffs even gave the
4 links to where they believe Defendants Kravchuk and Inksystem LLC confirm that
5 they are dealing with counterfeit Epson products, but following these links reveals
6 that there is no admission by Defendants that the cartridges are counterfeit or
7 infringing. This is an additional reason for the Court to take into account and
8 accept the new facts recently provided by the independent expert review by Dr.
9 Battersby.

10 Plaintiffs also allege, “Defendants’ [Kravchuk and Inksystem LLC] Motion
11 relies entirely on an inadmissible, irrelevant, and unchecked purported excerpt
12 from an expert report” (ECF No. 266) despite the fact that the expert review
13 evidence disclosed was correct, relevant and verified by Plaintiffs. Plaintiffs call
14 the expert report by Dr Battersby “unchecked” and “irrelevant” even though their
15 representative Mr Herb Seitz was present during the examination.

16 Plaintiffs’ argument is groundless.

17 B. “The Record Confirms the Correctness of the Entered Asset Seizure
18 and Injunctive Relief”. ECF No. 266.

1 Here Plaintiffs claim that “none of Defendants’ [Kravchuk and Inksystem
2 LLC] late arguments now require any change to the Asset Freeze Order or bond”
3 (ECF No. 266). Plaintiffs make this conclusion without providing any evidence or
4 argument. Despite the fact that the expert review is a new significant fact
5 significantly impacting Plaintiffs’ likelihood of prevailing on the merits, Plaintiffs
6 allege the argument is “late” without any basis.

7 Plaintiffs’ argument is groundless.

8 Plaintiffs did not counter the conclusions of the Expert Report on the merits.
9 The only comments on the content of Expert Report from their side were:

10 (i) “Defendants’ [Kravchuk and Inksystem LLC] purported expert report
11 merely states in the “Summary” that whatever cartridges that were examined were
12 “similar,” which does not preclude a finding that they were also counterfeit as
13 counterfeits are by definition purposefully similar to their genuine counterparts”
14 (ECF No. 266). At the same time, Plaintiffs ignored the other findings from expert
15 report that support the expert’s conclusion that the cartridges were genuine and not
16 counterfeit or infringing: “features that show the Epson cartridge assessed on
17 9/18/17 at the law office of Davis Wright Tremaine to be identical to other Epson
18 cartridges purchased at retail stores in the USA”; “the color and print quality of the
19 ink in the cartridge is the same”; “the Epson printer recognized the cartridge as an

1 Epson cartridge"; "engravings and embossing is identical"; "no signs of the LA
2 Epson cartridge having been refilled"; "there were no holes drilled into the
3 cartridge"; "the cartridge does have a genuine Epson chip" and many others
4 findings all justifying the expert's conclusion that the cartridges seized were
5 genuine and not infringing or counterfeit. (See Exhibit 1 attached to ECF No. 256);

6 (ii) Plaintiffs also state "the report noted that "some of the label" had been
7 removed from one of the items, purportedly claimed by non-moving party AF
8 LLC, consistent with the remanufacture process admitted by Defendants
9 [Kravchuk and Inksystem LLC]." Defendants Kravchuk and Inksystem LLC
10 believe that the label was removed by Amazon or Epson, not by someone from
11 Defendants. This belief is supported by the fact that these cartridges were delivered
12 to Amazon in an "as is" condition for resale. It appears Amazon or Epson crudely
13 attempted to see if the cartridges were genuine by trying to remove the original
14 genuine label, but as stated by the expert, the label was a genuine Epson label. It
15 had not been removed and it had not been replaced by any other label. Thus, even
16 with the label partially removed by Amazon or Epson, this cartridge was found by
17 the expert to be genuine.

18 ///

19 ///

1 **C. CONCLUSION.**

2 Respectively, Defendants Kravchuk and Inksystem LLC's Motion ECF No.
3 256 should be granted by the Court and the Preliminary Injunction should be
4 vacated or alternatively the bond should be increased to \$800,000.00.

5 DATED on November 28, 2017.

6 Defendants hereby sign this reply under penalty of perjury under the laws of
7 the United States:

8 /s/ Andriy Kravchuk

Andriy Kravchuk,
1000 Bible Way ste 40,
Reno, NV, 89502,
Phone (408)386-2221;
Email: ualhimik@yahoo.com

/s/ Andriy Kravchuk

Managing member of Inksystem llc,
Andriy Kravchuk,
1000 Bible Way ste 40,
Reno, NV, 89502,
Phone (408)386-2221;
Email: ualhimik@yahoo.com

24
25
26
27
28
29
30
31

CERTIFICATE OF SERVICE

We hereby certify that We are co Defendants and that on November 28, 2017, We served a full, true and correct copy of the foregoing DEFENDANTS KRAVCHUK AND INKSYSTEM LLC'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS KRAVCHUK AND INKSYSTEM LLC'S MOTION TO VACATE OR ALTERNATIVELY AMEND PRELIMINARY INJUNCTION AND INCREASE THE BOND ECF No. 159 via the United States District Court Clerk and via United States Postal Service upon the following:

1. J. Andrew Coomb, J. Andrew Coombs, A Prof. Corp. 520 East Wilson Ave., Suite 200
Glendale, California 91206, Telephone: (818) 5003200 andy@coombspc.com
annie@coombspc.com;

2. James D. Boyle Hannah S. Goodwin Holley Driggs Walch Fine Wray Puzey & Thompson, 400 South Fourth Street, Third Floor Las Vegas, Nevada 89101, Telephone: (702) 7910308 jboyle@nevadafirm.com:

3. Annie S Wang, Wang Law Corporation, 520 East Wilson Ave., Suite 200 Glendale, California 91206, Telephone: (818) 5003200, annie@wangalc.com.

/s/ Andriy Kravchuk
Andriy Kravchuk,
1000 Bible Way ste 40,
Reno, NV, 89502,
Phone (408)3862221;
Email: ualhimik@yahoo.com

/s/ Andriy Kravchuk
Managing member of Inksystem llc,
Andriy Kravchuk,
1000 Bible Way ste 40,
Reno, NV, 89502,
Phone (408)3862221;
Email: ualhimik@yahoo.com